

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard treatment in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with applicable State or local laws, ordinances, codes or regulations governing the inspection, testing or treatment of lead-based paint hazards.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 1003.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include the certification in appendix B of part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A grantee may rely on the certification, unless it knows the certification is erroneous.

Subpart H—Program Performance

§ 1003.700 Review of grantee's performance.

(a) *Objective.* HUD will review each grantee's performance to determine whether the grantee has:

(1) Complied with the requirements of the Act, this part, the grant agreement and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each grantee's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the grantee;

(3) Records maintained by the grantee;

(4) Results of HUD's monitoring of the grantee's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 1003.701 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the grantee has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or

similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

- (1) Request the grantee to submit progress schedules for completing approved activities or for complying with the requirements of this part;
- (2) Issue a letter of warning advising the grantee of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the grantee on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;
- (3) Advise the grantee to suspend, discontinue, or not incur costs for the affected activity;
- (4) Advise the grantee to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of part 58 and provided that such reprogramming is subjected to the environmental review procedures of part 58 of this title;
- (5) Advise the grantee to reimburse the grantee's program account or line of credit in any amount improperly expended;
- (6) Change the method of payment from a line of credit basis to a reimbursement basis; and/or
- (7) Suspend the line of credit until corrective actions are taken.

§ 1003.702 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 1003.701(b) has been taken and only then if the grantee has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the grantee also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Area ONAP determines, on the basis of a review of the grantee's performance, that the objectives set forth in

§ 1003.700(a)(2) or (3) have not been met, the Area ONAP may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 1003.703 Other remedies for non-compliance.

(a) *Secretarial actions.* If the Secretary finds a grantee has failed to comply with any provision of this part even after corrective actions authorized under § 1003.701 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the grantee. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing):

- (1) Terminate the grant to the grantee;
- (2) Reduce the grant to the grantee by an amount equal to the amount which was not expended in accordance with this part; or
- (3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the grantee's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a grantee has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

PART 1004 [RESERVED]